

ORDINANCE NO. _____, SERIES 2008

AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING THE ISSUANCE OF ITS INDUSTRIAL BUILDING REVENUE BONDS, SERIES A AND B (UNIVERSITY RESIDENCES – LOUISVILLE, LLC PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$60,000,000, TO DEFRAY THE COST OF ACQUIRING A TRACT OF 42.69 ACRES AT 620 SHIPP AVENUE, LOUISVILLE, KENTUCKY 40208 AND THE CONSTRUCTION, FURNISHING AND EQUIPPING THEREON OF A RESIDENTIAL RENTAL APARTMENT COMMUNITY, AND TO FINANCE CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE LEASE AND FINANCING AGREEMENTS, BOND PURCHASE AGREEMENTS AND OTHER RELATED DOCUMENTS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS .

Sponsored by: Councilman, George Unseld

WHEREAS, the Louisville/Jefferson County Metro Government (the "Issuer") is a political subdivision of the Commonwealth of Kentucky (the "Commonwealth") organized and existing under the Constitution and laws of the Commonwealth and as such is authorized under the Industrial Buildings for Cities and Counties Act, Sections 103.200 to 103.285 of the Kentucky Revised Statutes, as amended (the "Act"), to issue its industrial building revenue bonds and lend the proceeds thereof to any person to finance the costs of acquiring, constructing and equipping an "industrial building" (as defined in the Act), including specifically any land, buildings, structures, improvements, equipment, machinery and other facilities suitable for any activity, including new construction designed for revitalization or redevelopment of downtown business districts as designated by the Issuer, subject to the review and approval of the State Local Debt Officer pursuant to KRS 103.2101(1), in order to accomplish the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment and encouraging the increase of industry therein, provided that such bonds are payable solely from the lease payments and other revenues derived in respect of the lease and do not constitute an indebtedness of the Issuer within the meaning of the Constitution and laws of the Commonwealth; and

WHEREAS, University Residences – Louisville, LLC (the "Company"), is an Ohio limited liability company, authorized to do business in the Commonwealth, applied to the Issuer for (i) the issuance pursuant to the Act of the Issuer's Industrial Building Revenue Bonds, Series A and B (University Residences – Louisville, LLC Project) in a principal amount of \$60,000,000 (the "Bonds") to defray the cost of acquiring a tract of 42.69 acres at 620 Shipp Avenue, Louisville, Kentucky 40208, and the construction, furnishing, and equipping thereon of a residential rental apartment community to be marketed primarily to students at the University of Louisville, who choose to live off-campus (the "Project"); (ii) the execution of a ~~lease~~[Lease and Financing Agreement by and between the Issuer and the Company dated as of September 1, 2008](#) (the "Lease") by and between Metro Government, as lessor, and the Company, as lessee,

pursuant to which (x) the Company will make rental payments sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due and all other costs of Metro Government incurred in connection with the Bonds and the Project and (y) the Company will be granted the option to acquire the Project upon payment or prepayment of the Bonds; and (iii) the payment of certain costs of issuance; and

WHEREAS, IN its Resolution No. 67, Series 2008, adopted April 17, 2008 (the "Inducement Resolution"), the Louisville/Jefferson County Metro Council (a) found and determined that the acquisition, construction, and installation of the Project constitutes an activity, including new construction, designed for revitalization or redevelopment of a downtown business district designated by Metro Government for purposes of KRS 103.200(1)(n) and will tend to accomplish the public purposes of the Act by promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein, and (b) undertook to issue the Bonds in a principal amount not to exceed \$60,000,000 for the purpose of defraying the costs of the acquisition, construction and installation of the Project for lease to the Company pursuant to the Lease; and

WHEREAS, the State Local Debt Officer has reviewed and approved the Project pursuant to KRS 103.2101(1); and

WHEREAS, the total amount of Bonds necessary to be issued to finance the Project will not exceed \$60,000,000 in total; and

WHEREAS, in order to accomplish the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein, the Issuer considers it necessary and proper to [1] authorize the issuance of its Industrial Building Revenue Bonds, Series A and B (the "Bonds") use the proceeds thereof to finance the costs of the Project, [2] authorize the execution and delivery of the Lease and Finance Agreements and the Bond Purchase Agreements, hereinafter identified, and the sale of the Bonds as hereinafter provided, and [3] take other related action.

NOW, THEREFORE, BE IT ORDAINED BY THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

Section 1. Public Purposes. The Louisville/Jefferson County Metro Government (the "Counsel") hereby finds and declares that the issuance of the Bonds and the loan of the proceeds thereof to the Company to finance the costs of the Project, as herein provided, will further the public purposes of the Act by promoting the economic development of the Commonwealth, relieving conditions of unemployment and encouraging the increase of industry therein.

Section 2. Authorization of the Bonds and the Project. For the purposes set forth in the preamble hereto:

A. The Bonds shall be issued in the aggregate principal amount of not to exceed \$60,000,000, in such forms and denominations, shall be numbered, dated and payable as set forth in the Indenture. The Bonds shall mature as provided in the form of the Bond as

contained in the Lease, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided therein. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor and the Clerk of the Issuer. In case any officer whose signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time. The form of the Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Indentures, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Indentures, shall represent the approved form of Bonds of the Issuer.

B. The issuance of bonds for the Project will provide benefits to the Issuer for multiple reasons, including, but not limited to, the following: (i) will provide revitalization of a downtown business district, and (ii) will provide employment opportunities to residents of Jefferson County.

Section 3. **Bonds are Not a Debt of the Issuer.** THE BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, RECEIPTS, AND OTHER RESOURCES PLEDGED UNDER THE INDENTURE. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION, OR A LOAN OF THE CREDIT OF THE ISSUER, THE COMMONWEALTH, OR ANY OTHER MUNICIPALITY, COUNTY, OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE COMMONWEALTH. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE COMMONWEALTH, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED OR COMMITTED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF ANY OF THOSE GOVERNMENTAL ENTITIES WITH RESPECT TO PAYMENT OF THE BONDS.

Section 4. **Authorization of Lease and Financing Agreements.** The Mayor and the Metro Council Clerk are hereby authorized and directed to execute and deliver on behalf of the Issuer a Series A Lease and Financing Agreement and a Series B Lease and Financing Agreement (the "Lease and Financing Agreements") between the Issuer and the Company substantially in the forms attached hereto as Exhibit A-1 and Exhibit A-2 with such changes as the Mayor shall approve, the execution thereof to constitute conclusive evidence of such approval.

Section 5. **Authorization of Bond Purchase Agreements.** The Mayor and the Metro Council Clerk are hereby authorized and directed to execute, acknowledge, and deliver on behalf of the Issuer loan agreements (the "Series A Bond Purchase Agreement" and the "Series B Bond Purchase Agreement") between the Issuer and the Company, substantially in the forms attached hereto as Exhibit B-1 and Exhibit B-2 with such changes as the Mayor shall approve, the execution thereof to constitute conclusive evidence of such approval, providing for the sale of the Bonds upon a negotiated basis at a price and on other terms approved by the Company and

the Underwriter as may be referred to in the Bond Purchase Agreements. It is hereby determined that the price for and the terms of the Bonds, and the sale thereof, all as provided in the aforesaid documents, are in the best interests of the Issuer and consistent with all legal requirements.

Section 6. Acceptance of Deed and Bill of Sale to the Project. Metro Government is hereby authorized to accept a Deed and a Bill of Sale from the Company conveying the Project to Metro Government in consideration of Metro Government's issuance of the Bonds to defray the costs of the Project to be leased to the Company, substantially in the respective forms attached hereto as Exhibit C and Exhibit D, with such changes therein as the officers accepting such instruments on behalf of Metro Government shall approve, as shall be conclusively evidenced by their execution and delivery of the Bond Documents.

Section 7. Authorization of Payment in Lieu of Tax Agreement. The Mayor and the Metro Council Clerk are hereby authorized and directed to execute, acknowledge and deliver on behalf of the Issuer the Payment in Lieu of Tax Agreement wherein the Company agrees to make payments to the Revenue Department of the Commonwealth and the Jefferson County School District. (Exhibit E).

Section 8. Conditions with Respect to Employment. It is a condition to the issuance of these Bonds that the Company agrees in the Lease and Financing Agreement attached hereto as Exhibits A-1 and A-2 that certain employment goals be in place. These goals are as follows:

(i) the Company's construction contractors and subcontractors (collectively, the "Project Construction Contractors") shall pay those employees for the construction of the Project (the "Project Construction Employees") not less than the prevailing wages determined by the U.S. Department of Labor to be applicable to residential construction in Jefferson County, Kentucky (the "County");

(ii) at least 15% of the Project Construction Employees shall be residents of the County; and

(iii) the Company shall adopt as its targets for the construction of the Project that at least 15% of the Project Construction Contractors shall be certified as minority business enterprises, at least 5% shall be certified as female business enterprises, and at least 0.5% shall be certified as disabled business enterprises, with such percentages to be the percentage that the amount of each Project Construction Contractor's contract bears to the total amount of all contracts for the construction of the Project.

Section 8. Further Acts and Deeds. The Mayor, Metro Council Clerk and other appropriate officers, employees or agents of the Issuer are hereby authorized and directed to execute, acknowledge and deliver on behalf of the Issuer any and all papers, instruments, certificates, affidavits and other documents, including a Quit Claim Deed and acceptance of a Bill of Sale with respect to the project, and to do and cause to be done any and all acts and things necessary or proper for entering into and effecting this Ordinance, the Bond Purchase Agreements, the Lease and Financing Agreements and the Bonds, provided that neither the Issuer nor any of its commissioners, officers, employees or agents incur any liability thereby.

Section 9. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Bond, or in the Lease and Financing Agreements or the Bond Purchase Agreements, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Lease and Financing Agreements and the Bond Purchase Agreements and the issuance of the Bonds.

Section 10. Open Meetings Law. This Issuer hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Issuer, and that all deliberations of this Issuer and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 11. Severability. The provisions of this ordinance are severable, and if any section, phrase or provision hereof shall for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of the remainder of this ordinance.

Section 12. Prior Conflicting Actions Superseded. To the extent that any ordinance, resolution, order or part thereof is in conflict with the provisions of this Ordinance, the provisions of this ordinance shall prevail and be given effect.

Section 13. Effective Date. This Ordinance shall be in full force and effect from and after its enactment and publication as provided by law.

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This Ordinance was given first reading at a duly convened meeting of the Council of the Louisville/Jefferson County Metro Government, held on the _____ day of _____, 2008, and given second reading approval and enacted at a duly convened meeting of the Council held on the _____ day of _____, 2008.

Jerry Abramson
Mayor

Jim King
President of the Council

Date

Approved:

Kathleen J. Herron, Clerk

Date

APPROVED AS TO FORM AND LEGALITY

Michael J. O'Connell
Jefferson County Attorney

By: James T. Carey
Assistant County Attorney

CERTIFICATE OF THE CLERK

I, Kathleen J. Herron, Metro Council Clerk, hereby certify that I am the duly qualified and acting Metro Council Clerk of the Louisville/Jefferson County Metro Government, that the foregoing Ordinance is a true copy of said Ordinance duly enacted by the Metro Council of said Metro Government, signed by the Mayor and President of the Council of said Metro Government, and attested under seal by me as Metro Council Clerk of the Metro Government, at a properly convened term and session of said Metro Council held on _____, 2008 as shown by the official records in my custody and under my control; that attached hereto are true copies of the documents approved therein, and that copies of such documents have also been duly filed and recorded in the official records of the Metro Government.

IN WITNESS WHEREOF, I have hereunder set my hand as Metro Council Clerk of the Louisville/Jefferson County Metro Government and the seal of the Metro Government this ____ day of _____, 2008.

Kathleen J. Herron, Clerk

[SEAL]

APPROVED AS TO FORM AND LEGALITY

Michael J. O'Connell
Jefferson County Attorney

By: James T. Carey
Assistant County Attorney

EXHIBIT A-1

SERIES A LEASE AND FINANCING AGREEMENT

EXHIBIT A-2

SERIES B LEASE AND FINANCING AGREEMENT

EXHIBIT B-1

SERIES A BOND PURCHASE AGREEMENT

EXHIBIT B-2

SERIES B BOND PURCHASE AGREEMENT

EXHIBIT C

DEED

EXHIBIT D

BILL OF SALE

Document comparison done by Workshare DeltaView on Thursday, August 21, 2008
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